

No. 13130

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IN THE  
**United States Court of Appeals  
For the Ninth Circuit**

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UNITED STATES OF AMERICA,

Appellant,

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP  
LINE, THE ROBERT DOLLAR CO., and  
H. M. LORBER, et al.,

Appellees.

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Appeal from the United States District Court for the Northern  
District of California, Southern Division.

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PROCEEDINGS HAD IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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In the United States Court of Appeals  
for the Ninth Circuit

No. 12917

R. STANLEY DOLLAR, et al.,  
Appellants,  
vs.

UNITED STATES OF AMERICA, et al.,  
Appellees.

No. 13130

UNITED STATES OF AMERICA,  
Appellant,  
vs.

R. STANLEY DOLLAR, et al.,  
Appellees.

NOTICE OF MOTION OF APPELLANT  
UNITED STATES OF AMERICA FOR IN-  
JUNCTION TO PRESERVE THE STATUS  
QUO PENDING APPEAL

To: Brobeck, Phleger & Harrison, Counsel for de-  
fendants R. Stanley Dollar, Dollar Steamship  
Line, The Robert Dollar Co. and H. M. Lorber.

Arthur B. Dunne, Counsel for defendants  
American President Lines, Ltd., and Joseph A.  
Tognetti.

Heller, Ehrmann, White & McAuliffe, coun-  
sel for defendant Wells Fargo Bank and Union  
Trust Company.

Chickering & Gregory, Counsel for defendant Anglo California National Bank of San Francisco.

Edward G. Chandler, Counsel for Ralph K. Davies, et al.

Please take notice that the undersigned will move the Court of Appeals for the Ninth Circuit on the 16th day of October, 1951, or as soon thereafter as they may be heard, for an injunction to preserve the status quo pending the disposition by said Court of Appeals of the pending appeal from the order of the United States District Court for the Northern District of California, Southern Division, entered October 3, 1951. A copy of said motion and memorandum of points and authorities in support thereof is attached hereto.

HOLMES BALDRIDGE,  
Assistant Attorney General,

EDWARD H. HICKEY,  
Attorney, Department of Justice

DONALD B. MacGUINEAS,  
Attorney, Department of Justice

PHILIP H. ANGELL,  
Special Assistant to the Attorney  
General

/s/ By PHILIP H. ANGELL,  
Attorneys for the Plaintiff.

## Motion of Appellant for Injunction to Preserve the Status Quo Pending Appeal

Now comes the United States of America, appellant, by its attorneys, and moves this Court for an injunction to preserve the status quo pending the disposition by this Court of the pending appeal from the order of the United States District Court for the Northern District of California, Southern Division, entered October 3, 1951 sustaining the motion of the Dollar defendants<sup>1</sup> (appellants in No. 12,917 and appellees in No. 13,130) to dismiss the complaint, for judgment on the pleadings, and for summary judgment, and dismissing the complaint, on the grounds that the issuance of such an injunction is essential to prevent irreparable injury to the United States and to the public welfare, and to preserve the appellate jurisdiction of this Court.

On March 12, 1951 the United States filed in the court below its complaint to quiet title to certain shares of stock of defendants American President Lines, and to obtain an adjudication that the adverse claimants to the stock, the Dollar defendants, have no title thereto. The other defendants in that action are American President Lines and its stock transfer agents and registrar. On March 19, 1951 the United States filed in the court below a motion for preliminary injunction to preserve the status quo pending adjudication of the conflicting claims of title to the stock by restraining the Dollar de-

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<sup>1</sup>R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber.

endants from making demands on American President Lines and its transfer agents to be registered as owners of the stock, and restraining American President Lines from registering the stock in the name of the Dollar defendants, or otherwise recognizing them as owners. This motion was supported by the verified complaint and by affidavits showing that because of the vital role of American President Lines in connection with military operations in Korea, even a temporary disruption of its present efficient management would create irreparable injury to the public interest.

On March 20 American President Lines filed in the court below a motion for instructions pointing out that it was being subjected to conflicting claims of ownership of the stock by appellant and by appellees, and that it was entitled to court instructions before taking any steps with respect to ownership of the shares. On April 6, 1951, after a full hearing, the court below (Harris, J.) filed an opinion holding that the status quo should be preserved pending a final determination of the issues as to ownership of the stock; that irreparable injury to the Government would result if such preliminary injunction were not granted; and hence that the Government was entitled to a preliminary injunction to maintain the status quo. Judge Harris further held that the request of American President Lines for instructions was answered by the granting of the injunctive relief. *United States v. Dollar*, 97 F. Supp. 50 (D.C. N.D. Cal.).

On April 11 Judge Harris entered a preliminary injunction restraining the Dollar defendants from exercising or attempting to exercise any rights or privileges as owners of the stock certificates or the shares of stock in controversy, and from making any demands upon American President Lines and its transfer agents that the Dollar defendants be registered as owners of the shares, or that new certificates representing said shares be issued to them, and restraining the Dollar defendants from disposing of the stock certificates and the shares. The preliminary injunction also enjoined American President Lines and its transfer agents from issuing any new stock certificates to the Dollar defendants or from registering them as owners of the stock, or from any way recognizing the Dollar defendants as the lawful owners of the stock.

On April 20, 1951 the Dollar defendants appealed to this Court from the issuance of said preliminary injunction (Appeal No. 12,917), and the record on appeal is now lodged here. On May 4 the Dollar defendants filed in this Court their motion for a stay of the preliminary injunction granted by Judge Harris. On June 22, 1951 this Court denied that motion. *Dollar v. United States*, 190 F. 2d 547.

In May, District Judge Murphy succeeded District Judge Harris as the judge assigned to hear motions in the court below. On October 3, 1951 Judge Murphy granted a motion made by the Dollar defendants for summary judgment, and entered an order dismissing the complaint. On October 4 the



United States took an appeal here from that order of Judge Murphy.

On October 10 the United States made application to District Judge Carter for an order continuing in effect the preliminary injunction entered by Judge Harris, in order to prevent irreparable injury to the United States and to protect the appellate jurisdiction of this Court. The application was made in the alternative, either (a) to continue the injunction in effect pending disposition of the present appeal, or (b) to continue the injunction in effect for a period of five days in order to permit appellant to apply to this Court for an injunction pending appeal. On October 10, 1951 Judge Murphy, who heard that motion, refused to grant an injunction on either basis.

As shown by the memorandum submitted by appellant in support of this motion and the record in this Court on Appeal No. 12,917 and the appeal from Judge Murphy's order, particularly the two affidavits of E. L. Cochrane<sup>2</sup> and that of Donald B. MacGuineas (which record is incorporated as a part of this motion), irreparable injury will result to the United States and to the public interest unless this injunction pending appeal is granted; the granting of such injunction is essential in order to protect and preserve the appellate jurisdiction of this Court; and this appeal presents substantial

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<sup>2</sup>A copy of the Cochrane affidavit of October 5 is filed herewith.



grounds for reversal of the order of the court below.

Respectfully submitted,

/s/ HOLMES BALDRIDGE,  
Assistant Attorney General

/s/ EDWARD H. HICKEY,  
Attorney, Department of Justice

/s/ PHILIP H. ANGELL,  
Special Assistant to the Attorney  
General

/s/ DONALD B. MacGUINEAS,  
Attorney, Department of Justice  
Attorneys for the United States

Certificate of Service attached.

[Endorsed]: Filed Oct. 10, 1951. Paul P. O'Brien,  
Clerk.

In the United States Court of Appeals  
for the Ninth Circuit

[Title of Causes Nos. 12,917, 13,130.]

AFFIDAVIT OF E. L. COCHRANE, CHAIR-  
MAN OF THE FEDERAL MARITIME  
BOARD AND HEAD OF THE MARITIME  
ADMINISTRATION, DEPARTMENT OF  
COMMERCE, IN SUPPORT OF MOTION  
OF APPELLANT FOR INJUNCTION TO  
PRESERVE THE STATUS QUO PEND-  
ING APPEAL.

I, E. L. Cochrane, being first duly sworn, do hereby depose and say:

1. I am the duly appointed and qualified Chairman of the Federal Maritime Board, and the head of the Maritime Administration, Department of Commerce.

2. The statements made in this affidavit are based upon my personal knowledge or upon information received by me in my official capacities aforesaid.

3. I make this affidavit in connection with the decision of Judge Edward P. Murphy of the United States District Court for the Northern District of California dismissing "with prejudice" the complaint filed by the United States to quiet title to stock of the American President Lines, Ltd. (known prior to its reorganization in 1938 as the Dollar Steamship Lines, Inc.) and setting aside a temporary injunction granted by Judge George B. Harris of the same court by which the Company

and its transfer agents were restrained from transferring the stock to the Dollar interests.

4. The Dollar interests have previously announced that when the stock was transferred to them they would take over control of the Company and supplant the present management. In fact they endeavored to do so at the annual meeting held March 19, 1951. This announcement was, according to newspaper reports, repeated immediately after **Judge Murphy's** decision (*New York Times*, October 4, 1951, page 59).

5. I am informed and believe that on June 4, 1951 the Supreme Court of the United States granted certiorari to review the March 16, 1951 order of the District Court for the District of Columbia requiring the Secretary of Commerce to endorse the stock certificates here involved and also the April 10, 1951 order of the Court of Appeals for the District of Columbia enjoining the prosecution of the Government's suit in California to prevent the transfer of the stock. The Supreme Court also stayed the Court of Appeals' order finding various Government officials in contempt until review of that order on petition for certiorari. In addition there is now pending before the Supreme Court an application to reconsider an order denying review to a decision of the Court of Appeals of the District of Columbia that the Dollars are the owners of the stock. Accordingly, I am informed that it is not unlikely that within the next few months the Supreme Court will hand down decisions that may well decide conclusively the controversy as to the

ownership of the stock and will at least afford material guidance as to the proper legal control of the Company for the immediate future.

6. Change of, or interference with, management at this time would disrupt operations of the Company at a most critical period in the national defense effort, particularly in the trans-Pacific trades and services in which the Company operates.

7. The United States Maritime Commission was created by an Act of Congress approved June 29, 1936 (49 Stat. 1985) to administer the Merchant Marine Act, 1936. The Act is expressly intended to foster and develop a United States Merchant Marine sufficient to carry on domestic water-borne commerce and a substantial portion of our water-borne export and import foreign commerce and capable of serving as a Naval and Military auxiliary in time of war or national emergency.

8. American President Lines, Ltd. under present management now is an integral and important unit in the American Merchant Marine, and as such an important factor in the national defense, commercial welfare and foreign policy of the United States of America. The company operates important cargo and passenger berth services around the world, trans-Pacific to Japan and the Philippine Islands, and between North Atlantic ports and ports in Malaya and Indonesia. All these services fulfill substantial roles in the normal commerce of the United States, and contribute vitally to the defense effort. The passenger services, constituting the only passenger services to the Orient, have supplemented

troop movements to Japan and Korea, and have participated in repatriation and other military lifts; the cargo services carry military cargo outward to the same destinations, and inbound from the Straits and Indonesia carry large quantities of rubber, tin and other strategic and critical materials essential to our national defense and economy. In addition to these regular operations, maintained with 22 vessels, the company has chartered 10 Victory ships exclusively for Defense Department trans-Pacific operations to Japan and Korea. Based on World War II experience, American President Lines, Ltd. has an organization capable of operating as General Agent approximately 100 Government vessels in full scale war service.

9. A report of the United States Maritime Commission (predecessor to the Federal Maritime Board) to the Congress of April 10, 1939, contains the following significant statements by the Commission with reference to the management of Dollar Steamship Lines, Inc., Ltd. at a time when the stock involved in the case of *R. Stanley Dollar et al v. Emory S. Land et al* was owned by the plaintiffs in said case:

“The past history of the Dollar operations made it obviously clear that the management was shockingly incompetent.

“The Dollar Line was notorious for its almost callous neglect of the conditions and accommodations of its crews’ quarters. Labor leaders implored the Commission to correct these conditions, stated that the labor situation on the Dollar ships could



not be controlled unless the Commission took remedial steps in connection with the crews' quarters.

"The resume of the affairs of the Dollar Line which follows this summary leads to certain logically inevitable conclusions. The problems of this service have been fundamental and chronic and involve difficulties recognized by the Government over a long period of time.

"It should be said at the outset that the problem is in no way attributable to a lack of business. Dollar Steamship Lines, Inc., Ltd., had an average gross operating revenue from its combination passenger and cargo vessels (exclusive of mail pay) of more than \$13,000,000 per annum during the eight years just past (1930-1937, inclusive). Almost \$5,000,000 per annum of this average sum was accounted for by passenger traffic.

"The real problem today is one which has harassed successive Federal agencies. The present Commission determined sometime ago that the principal issue must be squarely met and the basic cause of the Dollar debacle removed.

"A. First and foremost of these 'fundamental' causes has been unsatisfactory management—the failure of 'controlling interests' to discharge satisfactorily their functions and to meet their obligations as managers.

"These failures are evidenced by—

"(a) Excessive withdrawals over a period of years as (i) salaries to executive officers and directors, (ii) commissions, on company transactions, to executive officers,



“(b) Excessive management fees to affiliated companies,

“(c) Failure of ‘controlling interests’ to cooperate with the creditor interests in constructive measures in the interest of the company.

“(d) The maintenance by the ‘controlling interests’ of an attitude inimical to sound development and maintenance of essential American-flag service from the West Coast to the Orient.

“B. As the direct consequence of these failures of the ‘controlling interests’ properly to perform their duty, we find—

“(a) Ever increasing current trade debts,

“(b) Constantly accelerated sapping of cash and financial resources of the company,

“(c) The company’s inability to meet long term financial obligations to Government when due,

“(d) Failure to maintain adequate service from the West Coast to the Orient,

“C. An accentuated and aggravated necessity for immediate ship repairs due in a large measure to prolonged under maintenance.

“Other factors have also contributed to the present plight of the company, but the fact remains that the failure of management has been the principal factor reducing the company to its present regrettable condition.

“The company met its obligations to the Government until early 1931 when, on account of heavy payments on the construction loans, it requested an extension until 1933 of the ship sales notes falling due in 1931 and 1932. These extensions were granted. In 1932, the company suffered a net loss

of \$1,000,000 and almost equal losses continued during 1933. By the middle of 1933, the company's condition became critical and required corrective action by the Government.

“Before going into the steps which the Government took and the underlying reasons therefor, it is well to state why the affairs of the Dollar Line became so critical, not only because these conditions closely parallel the presently existing conditions which confront the Commission today, but also because the underlying causes for these conditions have been of a continuing nature and exist today.

“1. Causes of the Financial Difficulties.

“(a) It will be recalled that the total cost of the 502's and the 535's was \$9,500,000, which had been reduced by annual payments over the period to 1931. In 1929 the company added approximately another million dollars to its liabilities through the acquisition of the President Fillmore and President Johnson, and then in addition, added almost \$15,000,000 in Government and bank loans for the acquisition of the President Hoover and President Coolidge. Obviously the amortization charges on this enormously increased funded debt was a cost difficult to be borne unless drastic measures were adopted for conserving its working capital.

“(b) But no such measures were adopted. On the contrary every conceivable device was adopted to drain the earnings and the working capital from the company as rapidly as possible. For example, in 1932 while the operating company was losing over a million dollars, The Robert Dollar Company, its

managing agent, whose principal source of income was from a management contract, made a profit of over \$60,000 and paid executive salaries of \$135,000. The Robert Dollar Company was owned by substantially the same interests who owned the operating company. As another illustration, the Pacific Lighterage Corporation, another affiliated company, during the years 1928 and 1933, had profits of approximately \$1,500,000 and paid dividends of almost \$1,000,000 by reason of its 'company' connections.

"It is, of course, difficult at this time to determine precisely the grand total of sums so diverted but the following table which shows the total payments from the Dollar Line group and the American Mail Line group to the four principal owners admitted by the company to have been made from 1923 through the first six months of 1934 is very illuminating.

Year	R. Stanley Dollar	J. Harold Dollar	H. M. Lorber	H. Fleish- hacker
1923 .....	\$26,748.24	\$30,480.00	\$32,236.80	.....
1924 .....	56,498.24	50,484.80	52,236.30	.....
1925 .....	98,656.54	30,482.80	32,236.80	\$626.88
1926 .....	356,081.38	50,484.80	52,236.80	8,126.88
1927 .....	304,448.28	52,323.68	53,195.84	30,966.24
1928 .....	373,213.08	127,662.68	82,736.85	59,456.53
1929 .....	419,002.75	187,747.08	119,061.36	95,462.10
1930 .....	345,993.41	209,102.21	112,019.25	120,661.15
1931 .....	216,447.70	110,896.55	69,874.92	21,987.82
1932 .....	141,442.06	103,416.56	61,257.99	29,469.25
1933 .....	116,739.58	85,662.50	50,000.00	11,000.00
1934 (6 mos.)	71,199.96	42,949.96	20,833.30	.....
<b>Total .....</b>	<b>\$2,526,501.22</b>	<b>\$1,081,693.62</b>	<b>\$737,926.21</b>	<b>\$377,756.85</b>

"(c) So long as the volume of trade and freight

rates kept up to predepression levels and so long as the company did not have to meet heavy amortization and fixed charges, these huge withdrawals did not have immediate harmful effects, but with the lower volume of traffic and the lower freight rates which ensued it was almost immediately seen that the company, from the point of view of working capital, had been seriously weakened."

10. It can be readily appreciated that it would be a most serious handicap to the defense effort of the American Merchant Marine that so vital and important a unit come into the hands of management proven to be "shockingly incompetent" and unable and/or unwilling "to discharge satisfactorily their functions and meet their obligations as managers." It can also be appreciated that no managers of shipping operations should be given an opportunity to exploit their positions of trust by draining the earnings and capital of the company for enormous payments to affiliated companies and to themselves.

11. The Maritime Commission was, and the Federal Maritime Board and Maritime Administration, as its successors, are responsible for the administration of the subsidy provisions of said Act. Section 601(a) of the Merchant Marine Act of 1936, as amended, prohibits the approval of an application for subsidy unless the Federal Maritime Board determines, inter alia, that "the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations \* \* \*" The present sub-

sidy contract between the Federal Maritime Board and American President Lines, Ltd. contains provision by which the Board may terminate the agreement if it is not satisfied with the "continued maintenance" of the "ability, experience, financial resources and other qualifications necessary to enable the Operator to conduct the proposed operations of the vessels covered by this agreement so as to meet competitive conditions and promote foreign commerce and in order further to give effect to undertakings given by the Operator to conduct its operations in the most economical and efficient manner." In connection with this contract, the Maritime Commission had approved the qualifications of the present management of the company as required by the Act, and as recently as April, 1951 the Federal Maritime Board (successor to the Maritime Commission) also approved its qualifications. In view of the explicit findings in the report of the Maritime Commission quoted above, it is apparent that the Federal Maritime Board would encounter serious difficulty in determining that management of the company by the Dollar interests would constitute "continued maintenance of the ability, experience, financial resources and other qualifications" necessary for its operations as required by the subsidy contract or in making the quasi-judicial findings required by the subsidy statute. Nevertheless, the Federal Maritime Board will conscientiously endeavor to perform this function upon such submission of the facts as the Dollar interests might make in the event of final court decision in their favor.



12. Although, as stated, the transfer of the management of the American President Lines, Ltd. to the Dollar interests at this critical moment of the American Merchant Marine would present most serious problems, even greater difficulties would arise if control were transferred to the Dollars and subsequently a decision of the United States Supreme Court or other tribunal should transfer it back again to its present control. Under such circumstances daily operations would be disrupted, company planning impeded, and key personnel of the present management lost to other shipping lines during the present period of intense marine activity. After such a dispersal of key personnel it would be obviously difficult to restore or replace them for American President Lines, Ltd. if the Dollar interests were eventually and authoritatively held not entitled to the stock in controversy. In short, from the point of view of the welfare of the American Merchant Marine, I must caution most urgently against shifting the control of this important line back and forth during the present national emergency.

13. Under the circumstances, it is my recommendation to the Court that the existing situation be maintained during the pendency of the appeal which the Government proposes to take from Judge Murphy's recent decision, at least until the lower courts receive guidance from the United States Su-



preme Court on the aspects of this controversy presently before that Court.

/s/ E. L. COCHRANE

District of Columbia, City of Washington, subscribed and sworn to before me this 5th day of October, 1951.

[Seal] RUTH HOLMES,  
Notary Public in and for the District of Columbia.  
My commission expires June 15, 1954.

Certificate of Service attached.

[Endorsed]: Filed Oct. 10, 1951. Paul P. O'Brien,  
Clerk.

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In the United States Court of Appeals  
for the Ninth Circuit

[Title of Cause No. 13,130.]

AFFIDAVIT OF E. H. HALL ON BEHALF OF  
APPELLEES IN OPPOSITION TO MO-  
TION FOR INJUNCTION PENDING AP-  
PEAL FROM FINAL DECREE

State of California,  
City and County of San Francisco—ss.

E. H. Hall, being first duly sworn, deposes and  
says:

I am the Treasurer and Comptroller of The  
Robert Dollar Co., one of the appellees, and I have  
occupied those positions for many years, and have  
the custody and control of the books of The Robert

Dollar Co. I have been in the shipping business for 48 years, beginning in 1903, and have served in practically every department. I have been in charge of an accounting department continuously since March 1915.

## I.

Until the year 1924 there was no regular round-the-world steamship service operated by any company, domestic or foreign. The first regular round-the-world steamship service was started by the Dollars in the year 1924. At that time it was the universal expectation of the shipping industry that no such round-the-world service could be successful. But under the management of The Robert Dollar Co., it proved to be a successful operation. This round-the-world service was the first in the history of the world in which the date and hour of departure and arrival were regularly scheduled in the shipping industry. After 1930 the service was operated by American President Lines, Ltd. under the managing agency of The Robert Dollar Co. In the entire period of operations from 1924-1938, with the exception of the Maritime strike of 1936, no scheduled sailing was ever missed for any reason whatever, until late in 1937, although in 1931 and 1937 the Japanese invasion of the Chinese seaports disrupted movements to and from Chinese ports.

## II.

Prior to January 1938 and from the inception of American President Lines, Ltd. The Robert Dollar Co. was its managing agent. Upon the granting in January 1938 of a temporary subsidy by the United

States Maritime Commission to Dollar Steamship Lines, Inc., Ltd. (now known as American President Lines, Ltd. and hereafter referred to in this affidavit as APL), the managing agency agreement of The Robert Dollar Co. for said APL was cancelled as of sailing after October 28, 1937.

APL's managing agency contract with The Robert Dollar Co. required the latter to pay the salaries of the managing officers and personnel. The executive officers of APL never received any salaries from it prior to 1938.

I do not know what commissions, if any, APL may have paid to any executive officer since the transfers to the United States Maritime Commission in 1938 of the shares of stock which are the subject matter of this litigation. But said APL paid no commissions of any kind to any officer prior thereto. The affidavit of Admiral E. L. Cochrane filed in this cause refers to alleged commissions. I personally know the facts concerning the subject referred to, and they are these:

In the years 1923 and 1925 ships were purchased by Dollar Steamship Line, a California corporation, one of the appellees here. That corporation is a different corporation from APL, which was incorporated in 1929. Commissions were voted by said appellee upon the purchase of said ships. I have seen and examined the corporate records of said appellee with respect to the commissions, and the payment of the commissions was approved at the time by a meeting of its stockholders.

## III.

The affidavit of Admiral E. L. Cochrane filed in this cause quotes at page 5 a hearsay statement that when the Dollars controlled APL prior to 1938, "every conceivable device was adopted to drain the earnings and working capital from the company as rapidly as possible." This is false.

The table of alleged "withdrawals" appearing at the top of page 6 of Admiral Cochrane's affidavit has its source in a previous report of the Post Office Department, and it appears in a statement before that Department to which I was a signatory with respect to data concerning American Mail Line and Admiral Oriental Line. I was not a signatory to that statement on behalf of APL or appellee Dollar Steamship Line. The Robert Dollar Co. was not a signatory thereto at all. Consequently, I am familiar with that table from its origin. Some of the figures in the table as they appear in the report quoted by Admiral Cochrane were changed upward from the prior report and the changes are unwarranted. None of the sums appearing on this table are or were withdrawals from APL.

## IV.

The Robert Dollar Co. has been in existence since 1903, acting as agent and manager to many ships and companies. It had offices and facilities throughout the world. For its services to these various ships and companies, it was remunerated on the customary world-wide basis of a flat percentage of earned gross revenues. This method of compensating agents and managers was the basis adopted by the United

States Shipping Board in 1917 and 1918 in the MO-4 Agreement system. This method of operating ships through managing agents and paying them a management fee was standard practice in the shipping business throughout the world until the adoption of the Merchant Marine Act of 1936, and it is still a practice followed in the American Merchant Marine particularly by the Military Sea Transportation Service of the United States Government.

By reason of the managing agency arrangement between The Robert Dollar Co. and APL, APL did not have to and did not maintain any managing or administrative departments. It had no managing or administrative payrolls to meet and did not have to maintain offices or facilities throughout the world.

For its services and facilities The Robert Dollar Co. was paid a fee of 10% of the gross operating revenues. No management fee was ever paid by APL to any company but The Robert Dollar Co. prior to the time the Maritime Commission took control. Out of the 10% fee The Robert Dollar Co. paid all expenses of management and administration, including payrolls, maintenances of offices and facilities in ports throughout the world.

A copy of the annual report for the year 1950 is part of the records of this Court in the case of *R. Stanley Dollar, et al. v. United States*, Docket No. 12917. According to that annual report, APL's administrative and general expenses for the year 1950 were \$6,366,601. This is the cost for the services of the kind, which formerly The Robert Dollar Co. performed. That report shows that the gross reve-



nues of APL for the year 1950 were \$48,936,339, plus \$198,867 for agency fees and commissions earned. To obtain the total gross revenue comparable to the figure that would have been subject to managing agency commissions under the prior arrangement, there must be added earned and collectible operating differential subsidy. The income statement in said annual report contains an item "Tentative Accrual of Operating Differential Subsidy (see Note 1)" in the amount of \$6,500,000. Note 1 states that this is an estimate which the company was not then in a position to verify or confirm. There after on June 21, 1951 Mr. Arthur B. Poole, Treasurer of APL, personally advised me that the amount of subsidy that the government had agreed was certainly payable for the years 1947 to 1950, inclusive, was \$5,500,000. Any other amounts would depend upon future events. Adding  $\frac{1}{4}$  of this amount as income in the 1950 income statement brings the total gross revenue for that year to \$50,510,206.00.

The administrative and general expenses referred to above constitute somewhat more than  $12\frac{1}{2}\%$  of this figure. This  $12\frac{1}{2}\%$  is to be compared with the 10% paid by APL to The Robert Dollar Co. for the same service prior to 1938. In other words, the present administrative and general expense cost of APL is 25% greater than it would have been under a managing agency arrangement such as prevailed with The Robert Dollar Co. prior to 1938.

Under date of February 17, 1938, the United States Maritime Commission made a report to Congress entitled "Financial Readjustments in Dollar



Steamship Lines, Inc., Ltd. and Documents Executed in Connection Therewith etc." At page 19 it is reported thus:

"In view of the history leading up to the enactment of Sec. 805(d) of the Merchant Marine Act, 1936, which section makes it unlawful, without the consent of the Commission, for any recipient of a subsidy to employ any managing or operating agent, the Commission carefully scrutinized the services rendered by and the compensation paid to The Robert Dollar Company as managing agent for Dollar Steamship Lines, Inc., Ltd. \* \* \*"

At page 157 of the same report to Congress, there appears a committee report dated January 20, 1938 to the Board of Directors of APL. The committee there states that it had made a study of the managing agency services performed by The Robert Dollar Co. for APL, that it "has had presented to it a summary of the earnings of The Robert Dollar Company for the 9½ years ending June 30, 1937, obtained from Ralph B. Butterfield, Auditor, United States Maritime Commission", and that it also had obtained from Mr. Butterfield additional information. The report then states that

"Upon giving consideration to the information thus obtained, and to other information available to it, your committee is unanimously of the opinion that the cost to The Robert Dollar Steamship Lines, services rendered by it to Dollar Steamship Lines, Inc., Ltd. as above described, was not less than the amounts of commission which would accrue to The

Robert Dollar Company therefor, by the terms of the aforesaid agreement of June 23, 1926",

that is, the agreement under which said managing agency services were being performed.

The committee rendering this report consisted of Arthur B. Poole, J. Hugh Jackson and D. T. Buckley.

Arthur B. Poole is now the Vice President and Treasurer of APL and a member of the Board of Directors and has been since January 1938. At pages 26 and 27 of said report to Congress of February 1938, the following appears concerning Messrs. Poole and Jackson:

"It also seemed to the Commission that in addition to there being a direct representative of the Commission on the Board of Directors [of APL], there should be at least one director representing the public interest \* \* \*

"Consequently [in January 1938 at the request of the Commission] the Board of Directors was revamped to include \* \* \* Mr. Arthur B. Poole, representing the Commission; and Mr. J. Hugh Jackson, representing the public.

\* \* \*

"Mr. Poole \* \* \* had previously been associated with Chairman Kennedy in a number of important corporate reorganizations. Mr. Jackson is presiding Dean of the Graduate School of Business of Stanford University and is Acting Comptroller. His election was approved by the Commission after

careful investigation, indicating his outstanding qualifications.

“Mr. Poole was also elected a Vice President of the company with very wide powers over its finances. On January 25, 1936, although this had not been required by the Commission, the other directors elected him Treasurer of the company in order further to clarify and extend his powers and duties.”

The third member of the committee reporting on the managing agency fees, as stated above, was D. T. Buckley. After the Commission took over the control of the company by reason of the stock transfers of October 1938, said D. T. Buckley continued in the service of APL until his retirement in 1946.

In the years while The Robert Dollar Co. acted as managing agent for APL it was also agent for other companies and was engaged in the lumber and other businesses. At page 19 of the February 1938 report to Congress it is stated that “The Robert Dollar Company engages in lumber and other operations distinct from the steamship business.”

The affidavit of Admiral Cochrane (p. 5) states that “In 1932 while the operating company was losing over a million dollars, The Robert Dollar Company, its managing agent, whose principal source of income was from a management contract, made a profit of over \$60,000 and paid executive salaries of \$135,000”. In fact, the principal source of income of The Robert Dollar Co. was not as there stated. While the greater portion of its gross in-

come was derived from that service, its net income in 1932 was derived in an equal amount from activities in no way connected with APL.

Furthermore, the figure of \$135,000 for executive salaries in 1932 is incorrect. The fact is that the executive department salaries, including those of clerks and stenographers, for The Robert Dollar Co. in 1932 was \$58,900. That figure is to be compared with APL's outlay in 1950 of \$175,578 for executive salaries excluding clerks and stenographers receiving less than \$5,000. The service performed by the executive department of The Robert Dollar Co. in 1932 included all the work presently performed by the executive department of APL and work for other activities as well. If the salary cost of the executive department of The Robert Dollar Co. in 1938 was excessive, then the present salary cost of APL is much more excessive.

After April 1934 and while it was managing agent for APL The Robert Dollar Co. paid no salaries to any of the individuals whose names appear at page 6 of Admiral Cochrane's affidavit.

Pacific Lighterage Corporation or Company, of which I was Treasurer for a period of 11 years, was a corporation engaged in the business of stevedoring, towing and barging. During the years from September 1927 to April 1937 it performed stevedoring services for APL. During the same period of time it performed stevedoring services for six other companies, including Blue Star Line (a British line) and Panama Pacific Line (a subsidiary of United States Lines). In the affidavit of Admiral

Cochrane referred to above there is a statement that the profits of Pacific Lighterage Company for the period 1928 to 1938 were 1½ million dollars. But only 20% to 25% of the revenue of Pacific Lighterage Company was received from APL.

In the year 1934 an investigator of the United States Shipping Board investigated the services performed by Pacific Lighterage Company for APL and American Mail Line and the charges made for the service. At that time I was Treasurer of American Mail Line and had ceased to be Treasurer of Pacific Lighterage Company only a short time before. The investigator told me that his investigation showed that Pacific Lighterage Company charged these two companies less for the services performed than other stevedoring companies would have charged, and showed me a written report to that effect which he stated he was submitting to the United States Shipping Board. At no time since that date have I heard it claimed by anyone that the amounts charged by Pacific Lighterage Company were unfair.

## V.

The memorandum filed in support of appellant's motion seeks to make a comparison between the condition of APL at the time the Maritime Commission took over the management in 1938 and its present condition. That comparison is completely misleading.

The memorandum states that when the Commission took control in 1938, APL had a "cumulative earnings deficit" of over 17 million dollars, that



APL's net income after taxes in 1950 exceeded 3 million dollars, and that during the period of government management from 1938 to 1950 the company earned over 30 million dollars.

But the actual facts are these: The figure of 17 million dollars stated to be "cumulative earnings deficit" includes a charge of \$6,350,000 arbitrarily set up, after the Commission took over the management, as a reserve "to be available \* \* \* to absorb losses which may be sustained upon disposition of capital assets and/or to bear charges for write down of capital assets".

It was so set up in the 1938 annual report, issued in 1939, and since 1943 has been called a "reserve for contingencies".

While two of the ships were thereafter sold for \$789,000 less than book value, and this amount was charged against the reserve, the other ships were sold at a profit of \$4,613,000 in excess of book value, as is stated in the 1950 annual report of the company. Consequently, \$5,561,000 of the reserve should not be included to build up the "cumulative earnings deficit". Similarly, while the profit of \$4,613,000 is carried in APL's statements as earned in the years after 1938, it actually represents a part of the 1938 values.

Thus APL's reports misrepresent the size of the deficit of the company at the time the Maritime Commission took over the management by \$6,000,000 and state as profits of government operation \$4,000,000 of pre-1938 asset values. The sum of the two produces a discrepancy of over 10 million dol-



lars between the actual condition of the company at the time of the change in management in 1938 and APL's present statements thereof.

Upon adjusting the figures to comport with truth and reality the deficit was not \$17,000,000 but \$7,000,000. Furthermore, the so-called "cumulative earnings deficit" of 17 million dollars contains in it the cost of effecting improvements and betterments required by the safety-at-sea requirements. These should not have been included in the deficit but should have been capitalized. The deficit would thus be reduced further.

A deficit of \$7,000,000 is small considering that it was the end result of 9 years of depression, two major maritime strikes, disruption of service at Oriental ports by war conditions, cutting off of mail pay in 1937, and failure to receive subsidies.

Moreover, most of this deficit occurred in 1938. The net loss of APL for the year 1938 was \$4,282,456.43. It was in this year that the service of the company was disrupted by difficulties in arriving at an agreement with the Maritime Commission. And after January 1938 APL's management was in large part dominated by the Maritime Commission and its financial affairs controlled by the Commission's appointee, Arthur B. Poole.

Similarly, the alleged profits of APL since 1938 and in 1950 must be restated in order to be correct. In the year 1950 APL sustained a loss after income charges but before subsidy of \$1,179,540, as may be determined from its 1950 annual report. As already stated in this affidavit, the subsidy agreed on

between APL and the government for the years 1947 to 1950, inclusive, is \$5,500,000. One quarter of this amount is to be assigned the year 1950, leaving an actual net income before income taxes for 1950 of \$195,460 and not \$5,320,460 before income taxes or \$3,181,278 after income taxes, as stated in the 1950 annual report.

The stated figure of \$30,159,000 of profit since the change of management in 1938 is also fallacious.

In the first place, this item includes \$4,613,000 of proceeds of ships in excess of the value carried on the books in 1938, as stated above.

In the second place, it fails to deduct a figure of \$1,356,000 representing payments of crew wage settlements, income taxes and interest thereon, war losses on equipment and other items, which were treated, instead, as reductions of the reserve originally set up against capital assets (as shown by the 1938 annual report and the quotation therefrom above) and not disclosed in the Income Statements.

In the third place, the alleged profit of 30 million dollars includes an item of \$19,700,000, as shown in the annual report for 1950, as "Tentative Accrual of Operating Differential Subsidy". As APL's Treasurer, Mr. Arthur B. Poole has told me, of this entire amount only \$5,500,000 is now certain. It is not possible to say whether any of the remaining \$14,200,000 will be collected, or if so how much. And it is true that if this \$14,200,000 should not be collected, the purported or "tentative" surplus would not be reduced in an equal amount because of resulting credits for recapture and income tax in amounts

not presently determinable from information in my possession.

In any event the profits for the 12 years, 1939-1950, are closer to \$10,000,000 than to \$30,000,000 or \$825,000 per year.

## VI.

I have recently caused to be made and am still conducting an investigation of the books of APL, to which I have been given partial access as a representative of stockholders. This investigation shows that 62% of all senior personnel in the employ of APL, that is to say, all personnel receiving over \$5,000 per year as of December 31, 1950, are people who were in the employ of The Robert Dollar Co. or under its management at the time it was managing agent for APL, and they had been trained by The Robert Dollar Co. The flyleaf of the 1950 annual report lists ten top officers. Of these Messrs. Alexander, Danaher, Varcoe, Goodwin and Tognetti were in the employ of The Robert Dollar Co. or under its management prior to the time the Maritime Commission took over the control of APL and have remained in the employ of APL ever since.

## VII.

The capital stock of APL consists of 2,386,243 shares of all classes outstanding, each having one vote. The shares involved in the present litigation total 2,200,145. Appellees and associates own 18,332 shares not in litigation. Another 13,061 shares are now in dispute between the United States and others as a result of the same transaction as that involved

in the present litigation. The remaining shares or minority stock total 154,705. Of this minority stock the present de facto APL management claims that 82,805 shares were voted for it at the annual election of the company in March 1951. This represents but 3½% of the voting control. I was present at said annual meeting. All but 4,562 shares were voted by proxy, and I know that some of those voting in person were against the management. Thus nearly all the minority shares cast for the defacto management was voted by proxy. None of the appellees solicited any proxies from any owners of the minority shares for said election, but management had sent out the usual routine and customary request for proxies.

E. H. HALL

Subscribed and sworn to before me this 15th day of October, 1951.

[Seal]

EUGENE P. JONES,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Oct. 15, 1951. Paul P. O'Brien,  
Clerk.

[In the U. S. Court of Appeals and Cause.]

AFFIDAVIT OF R. S. VAN DUYNE IN BE-  
HALF OF APPELLEES' OPPOSITION TO  
MOTION FOR INJUNCTION PENDING  
APPEAL.

State of California,  
City and County of San Francisco—ss.

R. S. Van Duyne, being first duly sworn, de-  
poses and says:

I am and for many years have been a custom  
broker doing business in San Francisco. My place  
of business is at 409 Washington Street, San Fran-  
cisco. As a customs broker I have occasion to know  
what steamship lines operate in various services,  
and I am in a position to find out the number of  
ships operated by them in such services.

At the present time there are 5 different steam-  
ship companies operating ships in regular service  
from San Francisco Bay to Korea, in addition to  
Military Sea Transportation Service. The total  
number of ships operated by these 5 companies to  
Korea is 85. Of these 85 ships 10 only are operated  
by American President Lines, Ltd.

R. S. VAN DUYNE

Subscribed and sworn to before me this 15th day  
of October, 1951.

PAUL R. McMANUS,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Oct. 15, 1951. Paul P. O'Brien,  
Clerk.



[In the U. S. Court of Appeals and Cause.]

AFFIDAVIT OF ARTHUR B. POOLE IN SUPPORT OF MOTION OF THE UNITED STATES FOR INJUNCTION PENDING APPEAL.

City and County of San Francisco,  
State of California—ss.

Arthur B. Poole, being first duly sworn, deposes and states as follows:

My name is Arthur B. Poole. I am 56 years old. I hold a Bachelor of Arts degree from the University of Minnesota, and have completed the two-year course in the Graduate School of Business Administration at Harvard University. I have held the degree of certified public accountant in Minnesota since 1924, in California since 1939. I served as a Supply Officer in the United States Navy in World War I. I was a practising public accountant 1920-1927, teaching in a school of accountancy during a part of that time. I was employed as financial officer-controller, treasurer, financial vice president, director, financial consultant—in several corporations 1927-1937. I have been since January 1938 treasurer, vice president, and director of American President Lines. I have been a consulting professor in the Stanford Graduate School of Business since 1939. I am a member of the California Society of Certified Public Accountants and of the American Institute of Accountants. I have been responsible for the financial records and accounts of American

President Lines since the reorganization in October 1938.

I have read Mr. E. H. Hall's affidavit of 15 October 1951.

On page 15 Mr. Hall objects to the Capital Assets Valuation Reserve of \$6,350,000 on the ground that only \$789,000 of it was needed to absorb losses on sales of two ships, and that the remainder, \$5,561,000, plus a profit of \$4,613,000 upon the sale of other ships, total about \$10,000,000, "actually represents a part of the 1938 values."

In 1938 the reorganization management found that the Dollar management had grossly failed to take adequate depreciation on the vessels which it owned. The rates of depreciation used were based on assumed useful lives running somewhat indiscriminately from 33 to 51 years. These rates of depreciation were far below the rates taken by the same management on the tax returns they signed, far below the rate established by the Congress in the Merchant Marine Act for subsidized operators (of which the Company was one), far below the rates customarily used in the steamship industry in this and other countries, and far below a rate which would spread the cost of the vessels over their reasonably expectable years of useful service. In fact, if one overlooks entirely the extraordinary write-up by which the Dollar management in 1929 transferred these same ships to American President Lines at more than \$8 millions above cost to predecessor affiliated companies, and if one accepts these new amounts at face value, the Dollar management

had failed by more than \$9.4 millions to provide the normal and standard 5% rate of depreciation. This simply means that measured by the rate of depreciation which the Dollar management had accepted and obligated itself to in the subsidy contract then in force, the losses of the last 9-5/12 years had been understated by \$9.4 millions.

The new Board of Directors in 1938 gave the matter lengthy consideration, appointed a special committee to investigate and report on capital asset valuations, including the Dean of the Stanford Graduate School of Business, received and discussed their findings and recommendations, and voted to have set up accordingly a Capital Assets Valuation Reserve in the amount of \$6,350,000.

In my opinion there is no justification for attempting to carry back to 1938 the events which grew out of World War II, and to credit against the earnings deficit of \$17,642,000 at 31 December 1938 the vessel sales and insurance recoveries which took place during the following nine years.

In fact, the profits taken in later years were booked after millions of dollars of additional depreciation had been taken on the vessels, and after such great changes in ship values and in value of the dollars received, that one cannot in common sense relate them to conditions in 1938 nor to the operations theretofore carried on.

But if one were nevertheless to treat the sale of every vessel coming under the Capital Assets Valuation Reserve as though it had in fact taken place at 31 December 1938, despite the fact that the sales

actually occurred 1940-1947, and even though such treatment cannot logically be defended, the position would not be as Mr. Hall infers. In fact the transactions would become almost uniformly losses:

Book value 31 December 1938 of 14 vessels (all vessels owned except the Presidents Fillmore and Johnson) .....	\$19,131,024.11
Proceeds of sale of the same vessels, realized in the years 1940-1947 .....	18,251,021.43
Loss .....	\$ 380,002.68

Again, if one continues to use, for purposes of argument, the fiction of having sold all 14 vessels at 31 December 1938 (actually, at that time there was found no market whatever for the Company's vessels except with scrap steel dealers), and if one were to ignore the real reason for the Capital Assets Valuation Reserve and dismiss it as unnecessary, the result would still be far from the putative \$7 million deficit arrived at on page 15 of Mr. Hall's affidavit:

Deficit accrued to December 31, 1938.....	\$17,642,462.90
Reverse Capital Assets Valuation Reserve.....	6,350,000.00
Remainder .....	\$11,292,462.90
Add loss on sale of vessels if treated as made 31 December 1938.....	380,002.68
Add inadequacy of reserve for reconditioning fleet at 31 December 1938 (see published report for the year 1939).....	106,924.63
Deficit arrived at under Mr. Hall's assumptions .....	\$12,279,390.26

On page 16 Mr. Hall excuses Dollar management for incurring in 1938 a very large loss, in part on

the ground that "after January 1938 APL's management was in large part dominated by the Maritime Commission and its financial affairs controlled by the Commission's appointee, Arthur B. Poole." During my employment between 10 January 1938 and 26 October 1938 I saw no evidence of domination by the Maritime Commission. As for myself, the Dollar management was advised in writing 9 December 1937 by the Chairman of the Maritime Commission: "It is not intended that such officer shall exercise control over operations and personnel except through such suggestions and recommendations as he may make \* \* \*" I abided by these instructions.

Farther down on page 16 Mr. Hall says: "In the year 1950 APL sustained a loss after income charges but before subsidy of \$1,179,540, as may be determined from its 1950 annual report." Apparently Mr. Hall has deducted the tentative accrual of operating-differential subsidy, \$6,500,000, from net income before provision for federal income taxes, \$5,320,460, and assumed that loss of subsidy would have resulted in a loss of the difference, \$1,179,540. This is, perhaps, a natural error, but an error just the same. The Company's operations for 1950 resulted in net income before allowance for any operating-differential subsidy.

On page 7 and again on page 16 Mr. Hall reports incorrectly a conversation with me, said to have taken place 21 June 1951. I recall the conversation, but not the date. I did not tell Mr. Hall that "the amount of subsidy that the government had agreed



was certainly payable for the years 1947 to 1950, inclusive, was \$5,500,000." Neither did I tell Mr. Hall that "the subsidy agreed on between APL and the government for the years 1947 to 1950, inclusive, is \$5,500,000." What I did tell Mr. Hall was that we on that day had subsidy vouchers in Washington by which we sought the immediate payment of \$5,500,000. Those vouchers have since been revised as required by the Maritime Administration, and are now being audited in Washington in the amount of \$6,000,000. Additional substantial amounts will be vouched as soon as definitive subsidy rates are established, further vouchers will be submitted upon contract amendments covering the transpacific passenger-freight service, and final vouchers will be submitted upon completion of each calendar year's general audit by the Maritime Commission.

A third time, at the bottom of page 17, Mr. Hall refers mistakenly to my telling him that "of this entire amount (\$19,700,000 of subsidy receivable) only \$5,500,000 is now certain." The \$19,700,000 carried on the books as subsidy receivable is an estimate, but it is an estimate made after years of discussions with Maritime Administration personnel, after viewing much of the foreign-flag vessel cost information obtained by them, after review of a large mass of foreign-flag vessel cost data gleaned throughout the world by our own employees and agents, and after consulting locally in Seattle, New York, and New Orleans with other subsidized operators, some of whom now have definitive post-war subsidy rates. It is my belief that the subsidy event-

ually collected will closely approximate the accrual now carried on the books. An important factor in my belief is the essential character of the Company's three contract services, as determined by the Maritime Commission and Administration, and the important part they play in the military, economic, and political relations of the United States with transpacific countries.

On page 17 Mr. Hall states that \$1,356,000 in certain costs was charged against the Reserve for Contingencies, whereas if there had been no Reserve for Contingencies they would have fallen against income and reduced net income by that amount. It is a fact that such charges were made, the amount being nearly as large as Mr. Hall states. His remarks would be appropriate in principle if the Reserve for Contingencies was an improper provision. But every step beginning with the original Capital Assets Valuation Reserve, continuing through its merger with three other reserves in 1943 to form the new Reserve for Contingencies, and including every entry in those accounts, has been examined, inquired into, and approved by the Company's auditors, Messrs. John F. Forbes & Co., and had the prior express approval and authority of the Board of Directors.

Mr. Hall's final assertion on page 18 is that "In any event the profits for the 12 years, 1939-1950, are closer to \$10,000,000 than to \$30,000,000 or \$825,000 per year." It is not known how Mr. Hall arrived at his amount of \$10 millions, but if one were to accept his own positions and alter the accounts to meet his

own contentions, one cannot arrive at a net income from operations less than over \$24 millions:

Net income including capital gains as reported by Company, and as it appears on annual statements all bearing the certificates of the Company's public accountants, 1939-1950, incl.....	\$30,159,000
Deduct all capital gains, on the unsupportable ground that they are really transactions related to the pre-1939 period.....	4,613,000
Remainder .....	\$25,546,000
Deduct all charges made against that portion of the Reserve for Contingencies which is descended from the Capital Assets Valuation Reserve, ignoring the cause and basis for the latter reserve .....	1,314,000
Remainder .....	\$24,232,000
Add inadequacy of fleet reconditioning reserve at 31 December 1938.....	107,000
Resulting net income 1939-1950, incl., all from operations .....	\$24,339,000

I am unable to concede the impropriety of any step by which the profit of \$30,159,000 was reached, and the most that can be said for Mr. Hall's position is that for some purposes it would be appropriate to net that amount against some of the charges to the Reserve for Contingencies, leaving a figure of \$28,845,000 (\$30,159,000 minus \$1,314,000).

In sum: Mr. Hall is misinformed about the theory and need behind the Capital Assets Valuation Reserve; he advances an untenable proposal for attempting to push vessel sales and insurance recoveries back into years in which they did not and

could not have occurred; he claims a \$10 million improvement in pre-1939 operating results based on these erroneous assumptions and suppositions; he blames the Maritime Commission and me for the 1938 loss while the Dollar management was in control of the Company; he is unaware of the relation between receipt of operating-differential subsidy and net income before provision for taxes; he misquotes me about the subsidy which has accrued in 1947-1950; his criticism of charges against the Reserve for Contingencies is dependent upon a fallacious assumption as to the nature of the reserve; and he writes down a post-1938 net income of \$30 million to \$10 million by a process which is unwarranted even upon his own assumptions.

/s/ ARTHUR B. POOLE

Subscribed and sworn to before me this 16th day of October, 1951.

[Seal]        /s/ SUSIE M. CONKLIN,  
Notary Public in and for the City and County of  
San Francisco. My Commission Expires July  
25, 1953.

[Endorsed]: Filed Oct. 16, 1951. Paul P. O'Brien,  
Clerk.

[Title of U. S. Court of Appeals and Cause.]

AFFIDAVIT OF W. K. VARCOE IN BEHALF  
OF APPELLANT'S MOTION FOR CON-  
TINUATION OF INJUNCTION PENDING  
APPEAL.

State of California,  
City and County of San Francisco—ss.

W. K. Varcoe, being first duly sworn, deposes and says:

1. I am presently Vice President in charge of Freight Traffic and Director of American President Lines, Ltd. (APL), having been appointed Vice President on May 1, 1949 and Director March 19, 1951. Having had 27 years experience with American President Lines, Ltd., all involving the movement of ships and cargoes, and having worked very closely with the war effort the past few years, I am thoroughly familiar with the activities of APL and steamship companies in the Pacific area in connection with the war effort and make this affidavit on the basis of my experience as above set forth, and on the basis of the records of APL within my control.

2. I have examined the 15 October 1951 affidavit of R. S. Van Duyne, stating that "at the present time there are 5 different steamship companies operating ships in regular service from San Francisco Bay to Korea", and that APL operates 10 of the 85 vessels involved. I do not understand either the assertions or the figures.

3. There are no steamship companies today which



operate in regular commercial service from San Francisco Bay to Korea. There is no commercial service. Likewise, there is no steamship company today which operates in regular service from San Francisco Bay to Korea with owned ships. All service from San Francisco Bay to Korea is under direction of Military Sea Transportation Service and practically all ships in this service are government owned and (1) assigned to MSTS directly by National Shipping Authority (Federal Maritime Board), or (2) assigned to American operators under bareboat charter and in turn time-chartered on per diem basis to MSTS, or (3) under General Agency Agreement (GAA) and in turn assigned to MSTS. APL operates a total of 18 vessels in the last two categories. These 18 ships as all others serving Korea do so strictly under direction of MSTS and do not "regularly" sail to Korea. Thus the same may be said of the vessels operated by others. APL is the largest of the trans-Pacific operators and presumably provides, accordingly, the largest single Korean service.

4. Only infrequently have owned ships served Korea on a space charter basis. American President Lines has under its space contract with MSTS held itself in readiness at all times to handle all military cargoes offered to Korea and will continue to act under the orders and at the direction of MSTS. In addition to general cargo space contracts, APL hold an MSTS reefer contract for 2 fully refrigerated ships, which ships again are entirely under MSTS control.

5. In addition to the above 20 ships APL now operates in its regular berth services 21 ships (19 of which are owned by APL), all of which have handled and will continue to handle at MSTs direction the vital military cargoes to the Far East in support of the Korean war effort.

6. There have been occasions in the past where APL have assigned ship tonnage from its regular berth service for the exclusive use of MSTs in the war effort, and APL is prepared to do so again in the future as and when called upon.

/s/ W. K. VARCOE

Subscribed and sworn to before me this 16 day of October, 1951.

[Seal]        /s/ SUSIE M. CONKLIN,  
Notary Public in and for the City and County of  
San Francisco, State of California. My Com-  
mission Expires July 25, 1953.

[Endorsed]: Filed Oct. 16, 1951. Paul P. O'Brien,  
Clerk.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13,130

[Title of Cause.]

Nov. 20, 1951

Before: Stephens, Healy, and Pope, Circuit Judges.

PER CURIAM OPINION

This case is here on appeal by the United States from a summary judgment in favor of appellees, defendants below, to the effect that title to the stock of American President Lines is in the defendants. The United States has moved for an injunction to preserve the status quo pending appeal.

Briefly stated, the ground of the trial court's holding is that, by reason of the intervention of government counsel in the suit of *Dollar v. Land*, the United States is estopped to relitigate the issues determined in that suit by the district and appellate courts of the District of Columbia Circuit. This would seem to be but another way of saying that the judgments there rendered are *res judicata* as regards the claims of the government. The holding appears at war with the repeated pronouncements of the Supreme Court that the judgments entered in *Dollar v. Land* would not be *res judicata* against the United States. *Land v. Dollar*, 330 U. S. 731, 736, 737, 739; *Land v. Dollar*, 341 U. S. 737, 739. That the Supreme Court was not unaware of the intervention of government counsel in those suits is evi-

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denced by the remarks of Mr. Justice Frankfurter in his separate memorandum in *Land v. Dollar*, 341 U. S. 737, 741. He there said that "At every stage, the Commissioners were represented by attorneys from the Department of Justice, who asserted as ground for dismissal that the action was a suit against the United States to which consent had not been given."

In this situation it is appropriate that a stay or supersedeas be granted. Counsel for the government are directed to prepare and submit to the court a proposed form of injunction to preserve the status quo pending appeal. The proposed form of injunction shall be served upon opposing counsel who shall have five days after service to make such further suggestions as they may decide proper.

[Endorsed]: Per Curiam Opinion. Filed Nov. 20, 1951. Paul P. O'Brien, Clerk.

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[Title of U. S. Court of Appeals and Cause.]

**PRAECIPE FOR RECORD ON PETITION  
FOR WRIT OF CERTIORARI**

To the Clerk of the above-entitled court:

The appellees, R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber, are about to file with the United States Supreme Court petition for writ of certiorari to review the judgment entered on October 3, 1951 by the United States District Court for the Northern District of California in the above-entitled cause now pending herein on appeal.

In connection with said petition and pursuant to Rule 39 of the Rules of the United States Supreme Court, you are hereby requested to prepare, certify and transmit to the Clerk of the United States Supreme Court the transcript of the record in the above-entitled cause. Please include therein the following:

1. All matters heretofore designated for printing by "Appellant's Designation of the Parts of the Record to be Printed" filed herein on or about October 26, 1951.

2. All matters heretofore designated by appellees for printing in the "Designation by Appellees R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber of Additional Parts of the Record Deemed to be Material" filed herein on or about November 5, 1951. However, there may be omitted therefrom for the time being the matters specified in Item 6 of appellees' said designation, to wit, Exhibits 1 and 2 to the Request for Admissions of Fact and the Transcript of Record and Supplemental Transcript of Record in the Supreme Court of the United States in Case No. 552, October Term, 1950. Said Exhibit 2 consists of the printed Joint Appendix in 5 volumes to briefs of the parties in the case of Dollar v. Land, et al., printed copies of which are already before the Supreme Court. Said Transcript of Record and Supplemental Transcript of Record are printed copies of the original transcript already before the Supreme Court. It is probable that reference to said Exhibit 1, Exhibit 2, said Transcript of Record and



Supplemental Transcript of Record may be provided for by stipulation between the parties; otherwise said matters may be included in a supplemental transcript of record to be transmitted to the Clerk of the United States Supreme Court in the event said petition for certiorari is granted. Accompanying this praecepe is a mimeographed copy of said Exhibit 1, which may be transmitted in lieu of the original and without printing.

3. The following proceedings occurring in this Court in No. 13,130, to wit:

(a) Notice of Motion of Appellant United States of America for Injunction to Preserve the Status Quo Pending Appeal, filed on or about October 10, 1951, together with said motion (but not including the supporting memorandum);

(b) Affidavit of E. L. Cochrane in support thereof;

(c) Affidavit of E. H. Hall on Behalf of Appellees in Opposition to Motion for Injunction pending Appeal from Final Decree, filed October 15, 1951;

(d) Affidavit of R. S. Van Duyne, filed October 15, 1951;

(e) Affidavit of Arthur B. Poole, filed October 16, 1951;

(f) Affidavit of W. E. Varcoe, filed October 16, 1951;

(g) Opinion of the Court rendered November 20, 1951.

4. This praecipe.

Dated: November 28, 1951.

/s/ HERMAN PHLEGER,  
/s/ GREGORY A. HARRISON,  
/s/ MOSES LASKY,  
/s/ ALVIN J. ROCKWELL,  
/s/ BROBECK, PHLEGER &  
HARRISON,  
Attorneys for Appellees.

Affidavit of Service attached.

[Endorsed]: Filed Dec. 5, 1951. Paul P. O'Brien,  
Clerk.

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[Title of U. S. Court of Appeals and Cause.]

APPELLANT'S SUPPLEMENTAL DESIGNA-  
TION OF RECORD ON PETITION FOR  
WRIT OF CERTIORARI

In connection with a proposed Petition for Writ of Certiorari to be filed in the Supreme Court by Appellees, R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co. and H. M. Lorber, to review the judgment entered on October 3, 1951 by the United States District Court for the Northern District of California now pending here on appeal, Appellant requests the Clerk to prepare and transmit to the Clerk of the Supreme Court of the United States, pursuant to Rules 38 and 39 of that Court, a certified transcript of the complete record in Appeals Nos. 12,917, 12,918 and 13,130 in this Court; provided however that:

1. No part of said record need be printed by the Clerk of this court other than the parts designated in the Praecipe for Record on Petition for Writ of Certiorari heretofore filed in this Court by appellees R. Stanley Dollar, et al.; and provided further that

2. There may be omitted from the certified transcript of the complete record, the following:

(a) Exhibit 2 to the request for admissions of fact filed by Appellants R. Stanley Dollar, et al., in the District Court for the Northern District of California on May 15, 1951 (which consists of a five volume printed joint appendix to briefs of appellants and appellees in the case of R. Stanley Dollar, et al. vs. Emory S. Land, et al, Appeal No. 10,299 in the United States Court of Appeals for the District of Columbia Circuit); and

(b) The printed copy of the transcript of record and supplemental transcript of record in the Supreme Court of the United States in Case No. 552, October Term 1950, which were received in evidence in the District Court for the Northern District of California on April 4, 1951 as Dollar exhibits 5 and 6.

Dated: December 7, 1951.

/s/ HOLMES BALDRIDGE,

Assistant Attorney General

/s/ PHILIP H. ANGELL,

Special Assistant to the Attorney  
General

Attorneys for Appellant.

[Endorsed]: Filed Dec. 7, 1951. Paul P. O'Brien,  
Clerk.

[Title of U. S. Court of Appeals and Cause.]

## ORDER RESTRAINING TRANSFER OF STOCK, ETC.

Pursuant to the Court's opinion filed November 20, 1951:

It Is Hereby Ordered, until further order of the Court, that for the purpose of preserving the status quo and preventing irreparable injury to the United States pending the appeal, appellees R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and H. M. Lorber be and they hereby are enjoined from taking any action to have issued in their names new certificates representing the 100,145 shares of Class A stock and the 2,100,000 shares of Class B stock of American President Lines, Ltd., in controversy, or to be registered as the owners of said stock and from pledging, selling, transferring or otherwise disposing of said shares or the stock certificates representing said shares; and

It Is Likewise Ordered that American President Lines, Ltd., and its stock transfer agents and stock registrar, Wells Fargo Bank and Union Trust Company, Joseph A. Tognetti, and the Anglo California National Bank of San Francisco be and they hereby are enjoined from issuing any new certificates representing said stock to appellees R. Stanley Dollar, Dollar Steamship Line, The Robert Dollar Co., and

H. M. Lorber, or from registering said appellees as owners of any of said shares of stock.

/s/ ALBERT LEE STEPHENS,

/s/ WILLIAM HEALY,

/s/ WALTER L. POPE,

United States Circuit Judges.

[Endorsed]: Filed Dec. 14, 1951. Paul P. O'Brien, Clerk.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 13,130

UNITED STATES OF AMERICA,  
Appellant,  
vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP  
LINE, THE ROBERT DOLLAR CO., and  
H. M. LORBER,  
Appellees.

MOTION BY APPELLANT, THE UNITED  
STATES, FOR PERMISSION TO REFER  
TO PARTS OF THE RECORD WITHOUT  
PRINTING

Now comes appellant, the United States, by its counsel, and moves the Court for an order granting permission to both appellant and appellees to refer in briefs and argument to parts of the records



lodged in this Court on this appeal and on Appeal No. 12,918 without printing such parts.

By designation filed with this Court on October 10, 1951, appellant has designated as the record on appeal the entire record in the District Court in action No. 30407, and that original record is lodged with the Clerk. In addition, in Appeal No. 12,918, appellants R. Stanley Dollar, et al., have designated as the record on that appeal, the record in the related action No. 30428, entitled Dollar, et al., vs. Land, et al., and that original record is also lodged with the Clerk.

In the present appeal, No. 13,130, appellant has designated for printing such parts of the record as appear to be obviously necessary for consideration of this appeal.

Contained in such original records are various other documents to which appellant or appellees may desire to make reference in briefs and argument, but which appellant has not designated for printing because some of them are exceedingly lengthy. For example, Exhibit 1 to appellees, request for admissions of fact is a 137-page stipulation filed in the case of Dollar, et al., v. Land, et al., No. 31468, in the United States District Court for the District of Columbia, and Exhibit 2 to that request is a joint appendix of 2,142 pages in five printed volumes in the case of Dollar, et al., v. Land, et al., No. 10299, in the United States Court of Appeals for the District of Columbia Circuit. The inclusion of such documents in the printed record on this appeal would obviously delay the time re-

quired to print the record and would entail considerable expense.

Accordingly, in the interests of the expeditious administration of justice, it seems desirable for this Court to grant permission to all parties to this appeal to refer in briefs and argument to any part of the original records in Appeals Nos. 13,130 and 12,918 even though not printed in the present record on appeal.

Respectfully submitted,

/s/ HOLMES BALDRIDGE,  
Assistant Attorney General.

/s/ EDWARD H. HICKEY,  
Atty., Department of Justice.

/s/ PHILIP H. ANGELL,  
Special Assistant to the  
Attorney General.

/s/ DONALD B. MacGUINEAS,  
Attorney, Department of Justice, Attorneys for  
Appellant United States.

/s/ ALBERT LEE STEPHENS,

/s/ WILLIAM HEALY,

/s/ WALTER L. POPE,  
Judges, U. S. Court of Ap-  
peals for the Ninth Circuit.

## Certificate of Service

I hereby certify that I have delivered copies of the foregoing Motion by Appellant, the United States, for Permission to Refer to Parts of the Record Without Printing, on October 26th, 1951, to counsel for appellees at their respective offices in San Francisco.

/s/ PHILIP H. ANGELL,  
Special Assistant to the  
Attorney General.

[Endorsed]: Filed Jan. 31, 1952.